



## **U.S. Department of Justice**

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### **NEWS RELEASE *BRIGHAM CITY DOCTOR INDICTED ON DRUG DISTRIBUTION CHARGES***

SALT LAKE CITY – Dr. Dewey C. MacKay, III, age 63, of Brigham City has been charged in a 130-count indictment with distributing controlled substances without a legitimate medical purpose and outside the usual course of professional treatment. Dr. MacKay is an orthopedic surgeon licensed to practice in Utah.

The indictment, returned by a federal grand jury Thursday, alleges Dr. MacKay routinely issued prescriptions for Schedule II and III controlled substances without conducting a medically-sufficient examination. Many new patients received a limited or no physical examination to diagnose the cause of the patient's reported pain, according to the indictment.

According to the indictment, from October 1981 to about March 1, 2007, Dr. MacKay practiced orthopedic medicine at a clinic in Brigham City. Two other physicians eventually joined this practice. Around March 1, 2007, Dr. MacKay moved to a solo practice in Brigham City.

From about 2005 through February 2007, according to the indictment, Dr. MacKay saw and prescribed to as many as 100-120 patients per eight-hour day. From March 2007 through at least October 2009, Dr. MacKay saw and prescribed to as many as 59 patients per four-to-five-hour day.

According to records maintained by the State of Utah, between June 2, 2005, and Oct. 30, 2009, Dr. MacKay issued 20,612 prescriptions for Hydrocodone products of all strengths totaling 1,931,293 pills. He issued 17,140 prescriptions for Oxycodone products of all strengths totaling 1,587,384 pills. Between Jan. 1, 2005, and June 5, 2008, Dr.

MacKay had the fourth-highest volume of prescriptions of Oxycodone products in Utah and the highest volume of prescriptions for Hydrocodone products in the state.

“Prescription drug abuse is a priority of the DEA and the DEA is fully committed to investigating these types of cases and those involved in the diversion and distribution of prescription drugs,” Frank Smith, Assistant Special Agent in Charge of the DEA in Salt Lake City, said today.

The first two counts of the indictment allege MacKay distributed Oxycodone and Hydrocodone tablets to an individual resulting in death. The potential penalty for Count 1, distribution of Oxycodone, is a minimum mandatory 20 years and a \$2 million fine. The potential penalty for Count 2, distribution of Hydrocodone, is up to 15 years and a \$500,000 fine.

The indictment charges 91 counts of distribution of Schedule II controlled substances. According to the indictment, Schedule II drugs have a high potential for abuse; the drug has a currently accepted medical use with severe restriction; and abuse of the drug may lead to severe psychological or physical dependence. The potential penalty for each count of distribution of Schedule II controlled substances is 20 years and a fine of \$1 million.

The distribution of Schedule III controlled substances is alleged in 34 counts of the indictment. Schedule III drugs have less potential for abuse than the drugs in Schedules I and II and have a currently accepted medical use. Abuse of these drugs also may lead to high psychological or moderate to low physical dependence. The potential penalty for each of these counts is 10 years and a fine of \$500,000.

The indictment also alleges three counts of use of a communication facility in a drug trafficking offense which each carry potential three-year penalties and fines of \$250,000.

Dr. MacKay will be issued a summons to appear in federal court on the charges.

Indictments are not findings of guilt. Individuals charged in indictments are presumed innocent unless or until proven guilty in court.

The case is being investigated by the DEA, the FBI, the Box Elder Narcotics Strike Force, including the Box Elder County Sheriff’s Office and the Brigham City Police Department; the Utah Division of Occupational and Professional Licensing, the Logan City Police Department, and other members of the Utah Pharmaceutical Drug Crime Project.

“The non-medical use of prescription pain relievers is the fastest-growing drug problem in the United States today and poses a serious threat to public health. Its tragic consequences are seen in substance abuse treatment centers and hospital emergency rooms throughout our nation,” Carlie Christensen, U.S. Attorney for Utah, said today.

“Any strategy to reduce illicit drug abuse requires the effective enforcement of the laws which regulate the distribution of controlled substances. This office is committed to combating prescription drug abuse through the aggressive prosecution of those physicians and pain clinics who do not follow appropriate prescription practices and thereby jeopardize the safety and well-being of their patients,” U.S. Attorney Christensen said.

James McTighe, FBI Special Agent in Charge of the FBI in Salt Lake City, said today, “The FBI is committed to assisting the DEA in its pursuit of individuals who irresponsibly dispense pharmaceuticals to those suffering from drug addictions. Such acts put individuals and the community at risk. The FBI stands ready to collaborate with our law enforcement partners in these important investigations and prosecutions.”

“The members of the Utah Pharmaceutical Drug Crime Project have done a yeoman’s job bringing this case to justice, ” said Francine A. Giani, Executive Director of the Utah Department of Commerce. “The Division of Occupational and Professional Licensing continues to support our valuable law enforcement partners in their mission to protect citizens from bad actors who put profit above public health.”

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*(Editor’s note: The penalties referenced above are potential penalties based on the individual federal statutes alleged in the indictment. The sentence is a matter for the federal district court judge if and when there is a conviction in the case. In addition to the potential penalty established by federal statute, a federal sentencing judge takes into account a number of factors required by federal statute related to the nature of the offense, the history and background of the defendant, and the need for a imposition of particular sentence. The judge must take into account the advisory guideline range in the U.S. Sentencing Guidelines, which is based on many additional criteria regarding the offense conduct, the impact on the victims, and the defendant’s background (and generally instructs application of a formula to account for multiple counts in an indictment). In arriving at the determination of an appropriate sentence, absent a conviction for a count carrying a mandatory minimum sentence, the judge considers these and other important facts and circumstances about the case. Thus, while the maximum penalties are provided above for informational purposes, it understates the considerations in the sentencing process to conclude that an individual faces a potential federal sentence by adding together each count’s potential sentence in the indictment.)*